

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
P: (518) 357-2048 | F: (518) 357-2087
www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED
7015 0640 0005 8292 2342

July 24, 2017

C. Thomas Chileski
P.O. Box 88
Susquehanna, PA 18847

Re: Order on Consent
R4-2017-0517-210

Dear Mr. Chileski:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$2,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: P. Wyckoff
J. June

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation Law
Article 23

Order on Consent
File No. R4-2017-0517-210

by

C. Thomas Chileski
P.O. Box 88
Susquehanna, PA 18847

Respondent

WHEREAS:

1. New York State Department of Environmental Conservation ("Department or DEC") has administrative jurisdiction pursuant to Environmental Conservation Law ("ECL") Title 27 of Article 23 to regulate surface mining and reclamation.
2. Respondent is a person, as that term is defined at ECL 23-2705 (12), and regulations at 6 NYCRR 420.1 (p).
3. Respondent owns/operates a mine known as Centerville Quarry, located on Morrison Brook Road, Hancock, New York, (Delaware County) ("site").
4. Department staff inspected the mine on August 27, 2015, May 18, 2016 and May 12, 2017.
5. On May 26, 2015, a Mining Termination Notice was received by the Department indicating that mining activity had terminated on May 4, 2015. The Department then issued Respondent a two year permit authorizing reclamation activities which expired on May 4, 2017. According to the Mining Termination Form, the quarry area was to be backfilled up to the existing high wall with material, all refuse and debris was to be removed, and the area was to be vegetated by August of 2015. Respondent was also required to construct a barrier around mine faces that exceeded 10 feet in height.
6. Department staff inspected the site in 2015 and 2016 and determined that no reclamation work had been done.
7. In an email to the Department dated December 13, 2016, Respondent stated that the only remaining work left to be done at the site was the grading and seeding of the topsoil.

8. On May 12, 2017, Department staff inspected the site and confirmed that a stone wall had been constructed around the high wall. An excavator operator and dump truck operator were actively filling in the quarry with the stockpiled spoil rock, but revealed that they had only been doing so for about 3 weeks. Department staff observed pieces of junk and debris scattered about the site.

9. ECL 23-2713(2) provides that: *“The reclamation of all affected land shall be completed in accordance with the schedule contained in the approved mined land-use plan pertaining thereto. The schedule, where possible, shall provide for orderly, continuing reclamation concurrent with mining. The permittee shall submit to the department a notice of termination of mining within thirty days after such termination. Reclamation of the affected land shall be completed within a two year period after mining is terminated, as determined by the department, unless the department deems it in the best interest of the people of the state to allow a longer period for reclamation. The permittee shall submit to the department a notice of completion of reclamation within thirty days of such completion. If the department fails to approve or disapprove the adequacy of reclamation within ninety days after receipt of the notice of completion of reclamation, the permittee may notify the department of such failure by means of certified mail return receipt requested addressed to the commissioner. If within thirty days after receipt of such notice, the department fails to mail a decision, the permittee shall be relieved of the obligation to maintain financial security in respect to reclamation; provided, however, nothing herein shall relieve the permittee of the obligation to accomplish adequate reclamation. The permittee shall file periodic reports at such times as the department shall require, indicating areas for which reclamation has been completed. The department shall inspect such areas and notify the permittee whether the reclamation is in accordance with the approved plan or whether there are deficiencies that must be corrected.”*

10. Regulations at 6 NYCRR §422.3(e) provides that *“The permittee shall reclaim all affected land within a two year period after mining ceases unless the department shall approve a longer period. The reclamation period may be extended in the following cases:*

(1) upon submission by the permittee of evidence, satisfactory to the department, that reclamation cannot be completed within the approved time schedule. An extension shall be granted for this case only when the permittee has made a reasonable effort to comply with the provisions of title 27 and this Subchapter.

(2) upon the temporary shutdown of a mine, during which time the permit and reclamation bond requirements shall remain in force. The permittee will also be required to maintain the mine in a condition which does not result in a contravention of environmental standards.”

11. Respondent violated ECL 23-2713(2) and regulations at 6 NYCRR §422.3(e) by failing to reclaim the affected land within a two year period after mining is terminated.

12. Regulations at 6 NYCRR §422.3(d)(2)(vi)(d) provides that *“An acceptable vegetative cover shall be considered to be a permanent stand or a stand capable of regeneration and succession sufficient to assure 75 percent coverage of the areas planted if only ground cover (no trees) is utilized, or a 60 percent survival rate for shrubs and trees which are utilized, by the end of the second growing season after planting. If revegetation is not completely successful, the areas of failure must be randomly distributed, shall not exceed one-half acre in every two acres so treated and shall not endanger the success of revegetation in adjacent areas within the affected land.”*

13. Respondent violated regulations at 6 NYCRR §422.3(d)(2)(vi)(d) by failing to achieve an acceptable vegetative cover by the end of the second growing season after planting.

14. Regulations at 6 NYCRR §422.3(d)(2)(i) provides that *“All refuse, spoil, unused mineral stockpiles and personal property shall either be removed from the permit area or utilized during reclamation of the affected land.”*

15. Respondent violated regulations at 6 NYCRR §422.3(d)(2)(i) by failing to remove all refuse and debris or fill in the quarry with the spoil piles and grade the area to an acceptable slope.

16. ECL Section 71-1307(1) provides that any person who violates any provision of Article 23 of the ECL or commits any offense described in Section 71-1305 of this title shall be liable to the people of this state for a civil penalty not to exceed eight thousand dollars (\$8,000) and an additional penalty of two thousand dollars (\$2,000) for each day during which such violation continues.

17. Respondent has affirmatively waived his right to notice and hearing in the Manner provided by law, has consented to the issuance and entry of this Order, and agrees to be bound by the terms, provisions and conditions contained herein.

NOW, being duly advised and having considered this matter, **IT IS HEREBY ORDERED THAT:**

I. Penalty

With respect to the aforesaid alleged violation, a civil penalty in the amount of FOUR THOUSAND DOLLARS (\$4,000) is hereby assessed against the Respondent of which TWO THOUSAND DOLLARS (\$2,000) shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department.

The balance TWO THOUSAND DOLLARS (\$2,000) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

In the event that Respondent fails to comply with the requirements of this Order, and fugitive dust continues to leave the site, regardless of the time of year, the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by the Respondent.

II. Force Majeure

If Respondent cannot comply with a deadline or requirement of this Order, because of an act of God, war, strike, riot, catastrophe or other condition which is not caused by the negligence or misconduct of Respondent and which could not have been avoided by Respondent through the exercise of due care, Respondent shall make his best effort to comply nonetheless and shall, within seventy-two hours (unless notice is required sooner by State or Federal law), notify the Department by telephone and in writing, pursuant to the communications provision of this Order, after it obtains knowledge of any such condition or event and request an appropriate extension or modification of this Order.

III. Reports

All reports required herein shall be made to the Region 4 office of DEC, 1130 North Westcott Road, Schenectady, NY 12306, Attn: Natural Resources Supervisor.

IV. Access

Respondent shall allow duly authorized agents and employees of DEC access to any facility, site, or records owned, operated, controlled, or maintained by Respondent, without prior notice, at such times as may be desirable or necessary, and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

V. Indemnification

Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees, for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent, his employees, servants, agents, successors or assigns.

VI. Successors and Assigns

The provisions of this Order shall be deemed to bind Respondent, his agents employees, successors, and assigns, and all persons, firms, and corporations acting under or for Respondent.

VII. Effective Date

The effective date of this Order shall be the date that the Commissioner or his designee signs it. The Department will provide Respondent (or the Respondent's Counsel) with a fully executed copy of this Order as soon as practicable after the Commissioner or her designee signs it.

VIII. Default

The failure of Respondent to comply fully and in timely fashion with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL, and shall constitute sufficient grounds for revocation of any permit, license, certification or approval issued to Respondent by DEC.

IX. Entire Agreement; Modification

This Order constitutes the entire agreement of the parties, and no provision of the agreement shall be deemed waived or otherwise modified except as is specifically set forth in a writing executed by the Commissioner or Regional Director of DEC indicating an intent to modify this Order.

X. Other Rights

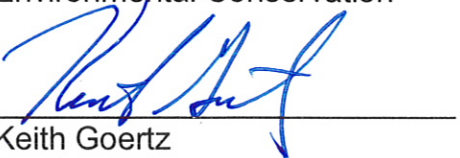
Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action, or demands whatsoever that the Department may have against anyone other than Respondent; (2) any right of the Department to enforce administratively or at law or in equity, the terms, provisions and conditions of this Order; (3) any right of the Department to bring any future action, either administrative or judicial, for any other violations of the ECL, the rules and regulations promulgated thereunder, or conditions contained in orders or permits, if any, issued by the Department to Respondent; (4) the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

DATED:

July 24 2017
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives his rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

C. Thomas Chileski

SIGNED: C. Thomas Chileski

TITLE: OWNER OPERATOR

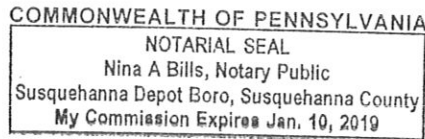
DATE: 7/19/17

STATE OF Pennsylvania

COUNTY OF Susquehanna ss.:

On the 19th day of July in the year 2017 before me, the undersigned, a Notary Public in and for the State, personally appeared C. Thomas Chileski personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Nina A Bills
Notary Public
Qualified in the County of: Susquehanna
My Commission Expires: Jan. 10, 2019



Schedule of Compliance

1. By August 1, 2017, all equipment and waste must be removed from the mine site.
2. By August 15, 2017, all spoil rock shall be pushed into the excavation, compacted to remove voids, and graded with slopes no greater than 1V:2H. The grading must be approved by the MLRS before the application of soil.
3. By September 1, 2017, a minimum of 18 inches of local soil or crushed shale, with a topsoil depth of 3 inches of shall be spread over all affected areas, per the approved plans. Any road that is shown on the reclamation plan map may remain after reclamation is complete.
4. Within 48 hours of the application of the soil, the following must be applied:
 - a) Seed with a conservation seeding mixture that contains at least 2 legumes (ex. red clover, trefoil, etc.) at the rate of 80 pounds per acre.
 - b) Perform pH test and lime as necessary.
 - c) Fertilize with a slow release nitrogen fertilizer at the rate of 300 pounds per acre.
 - d) Hay mulch at the rate of 2,000 pounds per acre without bare spots.

The MLRS must be contacted when grading is complete to schedule an inspection.

5. The vegetation must reach the regulatory requirement of 75% vegetative cover in the summer of 2018. The MLRS will conduct a reclamation inspection in the summer of 2018. If the vegetation does not meet the required cover, the MLRS will require the application of additional fertile soil and seed, fertilizer and mulch.